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POLICY ISSUES

Development of an international legally binding instrument for the application of the prior informed consent procedure for certain hazardous chemicals in international trade

Report of the Executive Director

Summary

The present report reviews the work towards the development of a legally binding instrument for the application of the prior informed consent (PIC) procedure for chemicals in international trade carried out within the framework of the Ad Hoc Working Group of Experts on the Implementation of the Amended London Guidelines for the Exchange of Information on Chemicals in International Trade, which was reconvened by the Executive Director in January 1993, pursuant to the request of the Governing Council in section 1, paragraph 8, of its decision 16/35 of 31 May 1991. It further reports on the response by UNEP and the Food and Agriculture Organization of the United Nations (FAO) to the recommendation of the International Conference on Chemical Safety, held in Stockholm in April 1994, and the Commission on Sustainable Development at its second session, held in New York in May 1994, that the two organizations should continue to evaluate and address problems with the implementation of the voluntary PIC procedure and to develop effective legally binding instruments concerning the PIC procedure. By the present note, the Governing Council is invited to consider authorizing the Executive Director to start negotiations, together with FAO, for an international legally binding instrument for the application of the prior informed consent procedure for certain hazardous chemicals in international trade.

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Suggested action by the Governing Council

The Governing Council may wish to:

(a) Note with appreciation the work of the Ad Hoc Working Group of Experts on the Implementation of the Amended London Guidelines and a task force established by the Working Group for the development of the instrument envisaged in chapter 19 of Agenda 21;

(b) Note also a recommendation by the International Conference on Chemical Safety held in Stockholm in April 1994, and the Commission on Sustainable Development at its second session held in New York in May 1994, that the United Nations Environment Programme, together with the Food and Agriculture Organization of the United Nations (FAO) and in close consultation with other international organizations, continue to evaluate and address problems with the implementation of the voluntary PIC procedure and to develop effective legally binding instruments concerning the PIC procedure;

(c) Further note an agreement at the FAO Council, at its one hundred and seventh session, held in Rome in November 1994, that the FAO secretariat should proceed with the preparation of a draft PIC convention as a part of the current FAO/UNEP programme on PIC and in cooperation with other international and non-governmental organizations concerned;

(d) Authorize the Executive Director to convene, together with the Food and Agriculture Organization of the United Nations and in consultation with Governments and other international organizations, within available resources, an intergovernmental negotiating meeting with a mandate to prepare an international legally binding instrument for the application of the prior informed consent procedure for certain hazardous chemicals in international trade;

(e) Decide that the intergovernmental negotiating meeting shall commence its work in late 1995 or early 1996;

(f) Request the Executive Director to convene, together with the Food and Agriculture Organization of the United Nations, before the intergovernmental negotiating meeting, a meeting of government-designated experts to review progress in the implementation of the voluntary prior informed consent procedure, address problems associated with it, and consider major issues that need to be addressed by the intergovernmental negotiating meeting;

(g) Also request the Executive Director to convene, together with the Director-General of the Food and Agriculture Organization of the United Nations, a diplomatic conference for the purpose of adopting and signing an international legally binding instrument for the application of the prior informed consent procedure for certain hazardous chemicals in international trade not later than early 1997;

(h) Further request the Executive Director to invite relevant international organizations to participate in the negotiating process for the development of the instrument;

(i) Call upon Governments that are in a position to do so to provide the necessary financial and technical resources to enable the full and effective functioning of the intergovernmental negotiating meeting, in particular, the full and effective participation of developing countries, and of countries with economies in transition.

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DEVELOPMENT OF AN INTERNATIONAL LEGALLY BINDING INSTRUMENT FOR THE APPLICATION OF THE PRIOR INFORMED CONSENT PROCEDURE FOR CERTAIN HAZARDOUS CHEMICALS IN INTERNATIONAL TRADE

1. In its decision 16/35 of 31 May 1991, the Governing Council of UNEP, at its sixteenth session, requested the Executive Director to reconvene the Ad Hoc Working Group of Experts on the Implementation of the Amended London Guidelines for further urgent action, including work on strengthening the legal basis of the amended London Guidelines, taking into consideration, inter alia, experience gained in the implementation of the Guidelines and the PIC procedure. Furthermore, one of the objectives of programme area C of chapter 19 of Agenda 21, adopted by the United Nations Conference on Environment and Development in Rio de Janeiro in June 1992, is "to achieve by the year 2000, as feasible, full participation in and implementation of the PIC procedure, including possible mandatory applications through legally binding instruments contained in the Amended London Guidelines and in the FAO International Code of Conduct, taking into account the experience gained within the PIC procedure" (Agenda 21, para. 19.38 (b)).

2. Pursuant to decision 16/35 of the Governing Council, the Executive Director reconvened the Ad Hoc Working Group, which held its third session in January 1993. The Ad Hoc Working Group recommended that, in light of chapter 19 of Agenda 21, UNEP should establish a task force to consider modalities for the development of a legally binding instrument for the application of the PIC procedure, including possible elements for the instrument. UNEP convened two meetings of the task force, in September 1993 and March 1994, with the participation of experts from Governments and representatives of relevant organizations. The task force reviewed experience in the implementation of the voluntary PIC procedure and considered elements which might be included in the instrument envisaged in chapter 19 of Agenda 21. The deliberations of the task force have resulted in a set of elements for such an instrument.

3. The fourth session of the Ad Hoc Working Group, held in Geneva in April 1994, was attended by Government-designated experts from 55 Governments and representatives of relevant organizations. The Working Group considered the results of the work of the task force in detail and further elaborated elements for a legally binding instrument for the application of the prior informed consent procedure (see UNEP/PIC/WG.1/4/5, annex). The Working Group recommended that a meeting of Government-designated experts should review the progress in the implementation of the voluntary PIC procedure under the amended London Guidelines and the development of the instrument.

4. Both the International Conference on Chemical Safety, held in Stockholm in April 1994 with the attendance of 114 Governments, and the Commission on Sustainable Development at its second session, held in New York in May 1994, recommended that "UNEP, together with FAO and in close consultation with other international organizations, continue to evaluate and address problems with the implementation of the voluntary PIC procedure and to develop effective legally binding instruments concerning the PIC procedure" (E/1994/33-E/CN.17/1994/20, chap.I, para.165). In July 1994, to further pursue the work for the development of a legally binding instrument for the application of the PIC procedure, the Executive Director circulated to all Governments the elements for the instrument identified by the Ad Hoc Working Group, inviting their comments. Those comments received by the UNEP secretariat will shortly be compiled in a document.

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5. In November 1994, having noted the work already done by UNEP for the development of a legally binding instrument for the application of the PIC procedure, the FAO Council, at its one hundred and seventh session, agreed that the FAO secretariat should proceed with the preparation of a draft legally binding instrument on the operation of the PIC procedure as part of the current FAO/UNEP programme on PIC and in cooperation with other international and non-governmental organizations concerned. The FAO Council discussed the time-frame required to develop a convention and many Council members considered it should be ready for adoption in 1997. The FAO Council agreed that the FAO should seek resources jointly with UNEP to finance the process for the preparation and the conclusion of a legally binding instrument.

6. To further discuss work to be done, UNEP, together with FAO, convened an informal consultative meeting in December 1994 to consider major issues related to the development of a legally binding instrument for the application of the PIC procedure. The meeting identified several major issues that will need to be addressed during negotiations for the development of such an instrument. Having noted the agreement at the FAO Council on the development of the instrument, the meeting suggested that the Executive Director of UNEP should seek a mandate to start negotiations on the development of such a legally binding instrument for the application of the PIC procedure from the Governing Council of UNEP at its eighteenth session, in May 1995, with a view to its conclusion possibly by 1997.

7. Should the Governing Council adopt such a decision at its eighteenth session, and dependent on the availability of the necessary financial resources, UNEP and FAO will organize the negotiating process for a legally binding instrument for the application of the PIC procedure, possibly starting in late 1995 or early 1996.

8. The financial resources necessary to enable successful negotiations and adoption of the instrument are estimated at 2.5 million United States dollars, which would cover meeting costs for one meeting of Government-designated experts (5 working days, in three languages), three sessions of an intergovernmental negotiating committee (7 working days for each session, in six languages), and a conference of plenipotentiaries (2 working days, in six languages) as well as support for participation in the negotiating process by developing countries and countries with economies in transition. In addition, it is expected that small meetings of technical and/or legal experts be convened during the inter-sessional period of envisaged meetings in order to address specific issues.